

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TEYO JOHNSON,

Plaintiff,

v.

EVERYREALM INC., WILLIAM KERR in his individual and professional capacities, JULIA SCHWARTZ in her individual and professional capacities, and JANINE YORIO in her individual and professional capacities,

Defendants.

Index No.: 1:22-cv-06669-PAE

PROPOSED CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER

This Civil Case Management Plan (the “Plan”) is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties **do not consent** to conducting all further proceedings before a Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences.
2. The parties disagree whether or not this case is to be tried by a jury

Plaintiff’s position is that the case is to be tried by a jury.

The Everyrealm Defendants maintain that Johnson waived his right to a jury trial. Specifically, on March 2, 2022, Johnson executed an agreement which contains a binding jury waiver provision applicable to Johnson’s SAC. (See doc. 64-1 at ¶ 10) (“By this arbitration agreement, you give up your right to trial by jury of any claim you may have against [Everyrealm]”).

3. The parties disagree on the deadline for plaintiff to amend his Complaint.

Plaintiff’s position: Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motion to amend or to join additional parties shall be filed within **30 days** from the date of this Order.

The Everyrealm Defendants’ Position: Any amendment to Plaintiff’s Second Amended Complaint or joinder of additional parties shall be filed within **7 days** from the date of this Court’s “Amend or Oppose” Order.

4. The parties disagree on the deadline to exchange initial disclosures.

Plaintiff's Position: Initial disclosures, pursuant to Fed. R. Civ. P. 26(a)(1), shall be completed no later than **14 days** from the date of this Order.

The Everyrealm Defendants' Position: Initial disclosures, pursuant to Fed. R. Civ. P. 26(a)(1), shall be completed no later than **21 days** from the date of this Order.

5. All fact discovery shall be completed no later than **Monday, July 10, 2023**.
6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 5 above.
 - a. The parties disagree on the deadline to exchange requests for production of documents.

Plaintiff's Position: Initial requests for production of documents to be served by **Friday, March 24, 2023**.

The Everyrealm Defendants' Position: Initial requests for production of documents to be served by **Friday, April 28, 2023**.

- b. The parties disagree on the deadline to exchange Interrogatories.

Plaintiff's Position: Interrogatories to be served by **Friday, March 24, 2023**.

The Everyrealm Defendants' Position: Interrogatories to be served by **Friday, April 28, 2023**.

- c. Depositions to be completed by **Friday, June 9, 2023**.
- d. Requests to Admit to be served no later than **Friday, April 28, 2023**.
7. a. All expert discovery shall be completed no later than **Tuesday, August 22, 2023**.
 - b. No later than thirty (30) days prior to the date in paragraph 5, *i.e.*, the completion of all fact discovery, the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (ii) all expert discovery shall be completed by the date set forth in paragraph 7(a).
8. All motions and applications shall be governed by the Court's Individual Rules and Practices, including the requirement of a pre-motion conference before a motion for summary judgment is filed. Pursuant to the authority of Fed. R. Civ. P. 16(c)(2), any motion for summary judgment will be deemed untimely unless a request for a pre-motion conference relating thereto is made in writing within fourteen (14) days of the date in paragraph 5, *i.e.*, the close of fact discovery.

9. All counsel must meet face-to-face for at least one hour to discuss settlement within fourteen (14) days following the close of fact discovery.
10. a. Counsel for the parties have discussed an informal exchange of information in aid of early settlement of this case and have agreed upon the following:

The parties will not engage in any informal exchange of information.

- b. Counsel for the parties have discussed the use of the following alternate dispute resolution mechanisms for use in this case: (i) a settlement conference before a Magistrate Judge; (ii) participation in the District's Mediation Program; and/or (iii) retention of a privately-retained mediator. Counsel for the parties propose the following alternate dispute resolution mechanism for this case:

The parties do not agree to participate in any alternate dispute resolution mechanisms.

- c. Counsel for the parties recommend that the alternate dispute resolution mechanism designated in paragraph 10(b), be employed at the following point in the case (e.g., within the next sixty days; after the deposition of plaintiff is completed (specify date); after the close of fact discovery):

The parties will consider whether to participate in ADR within 60 days or after the close of fact discovery.

- d. The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.

11. The Final Pretrial Order date is thirty (30) days following the close of fact and expert discovery (whichever is later). By the Final Pretrial Order date, the parties shall submit a Joint Pretrial Order prepared in accordance with the undersigned's Individual Rules and Practices and Fed. R. Civ. P. 26(a)(3). Any motions *in limine* shall be filed after the close of discovery on or before the Final Pretrial Order date. If this action is to be tried before a jury, proposed *voir dire*, jury instructions and verdict form shall also be filed on or before the Final Pretrial Order date. Counsel are required to meet and confer on a joint submission of proposed jury instructions and verdict form, noting any points of disagreement in the joint submission. Jury instructions may not be submitted after the Final Pretrial Order date, unless they meet the standard of Fed. R. Civ. P. 51(a)(2)(A). If this action is to be tried to the Court, proposed findings of fact and conclusions of law should be submitted on or before the Final Pretrial Order date.
12. Counsel for the parties have conferred and their present best estimate of the length of trial is **5 days**.
13. [Other items, including those in Rule 26(f)(3).]

N/A

TO BE COMPLETED BY THE COURT:

The Plan has been reviewed by the Court and, except as modified, is adopted as the Scheduling Order of this Court in accordance with Fed. R. Civ. P. 16(b).

14. [Other]

15. The next Case Management Conference is scheduled for _____ at _____

Unless otherwise indicated, the Case Management Conference will be held **telephonically**. The parties should call into the Court's dedicated conference line at **(888) 363-4749, and enter Access Code 468-4906, followed by the pound (#) key**. Counsel are directed to review the Court's Emergency Individual Rules and Practices in Light of COVID-19, found at <https://nysd.uscourts.gov/hon-paul-engelmayer>, for the Court's procedures for telephonic conferences and for instructions for communicating with chambers.

All conferences with the Court are scheduled for a specific time; there is no other matter scheduled for that time, and counsel are directed to appear promptly. All pretrial conferences must be attended by the attorney who will serve as principal trial counsel.

Please email to EngelmayerNYSDChambers@nysd.uscourts.gov, no later than twenty-four hours before the conference, the names of any counsel who wish to enter an appearance at the conference, and the number from which each counsel will be calling.

This ORDER may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein (except as noted in paragraph 6) shall be made in a written application in accordance with paragraph I.E of the Court's Individual Rules and Practices and shall be made no less than two (2) business days prior to the expiration of the date sought to be extended.

Paul A. Engelmayer
United States District Judge

Dated: New York, New York
